REMARKS

A. Status of Claims.

Favorable reconsideration of this application as presently amended is respectfully requested. Claims 1-20 are pending. In this Amendment, Claims 1, 8, 9 and 15 are amended and claims 33-35 are added. No new matter is added.

B. Response to Rejection of Claims 6, 8 and 13 under 35 U.S.C. § 112, Second Paragraph.

At Sections 1 and 2 of the Office Action, Claims 6, 8 and 13 are rejected under 35 U.S.C. § 112, second paragraph. This rejection is now moot in view of the present amendments to the claims.

Applicants have amended Claims 6, 8, and 13 as suggested in the Office Action. Applicants have also amended Claims 1 and 9 to use the term "thermoplastic membrane" instead of the term "membrane comprised on a thermoplastic" with the understanding that a thermoplastic membrane may include therein additives such as: a UV absorber and/or a UV screener (Claims 2 and 11), a fire retardant (Claims 3 and 12), *etc.*

With respect to the adhesive used in the product and method of the claims, Applicants note that as defined in the present application at paragraph [0041], the term "dead load shear capable adhesive" is not identical in meaning to the term "hot melt pressure sensitive adhesives." The term "dead load shear capable adhesive" covers any hot melt pressure adhesive and any other type of adhesive meeting the requirement of the application's definition of "dead load shear capable adhesive." As repeatedly held by the Federal Circuit, a patentee may be his own lexicographer (see, for example, *Boss Control Inc. v. Bombardier Inc.*, 75 USPQ2d 1038, 1041 (Fed. Cir. 2005).

C. Response to Objections under 35 U.S.C. § 132(a) .

At Section 3, the Amendment filed July 8, 2004 is objected to under 35 U.S.C. § 132(a). This rejection is now moot in view of the present amendments to the specification.

The above amendments clarify that the adhesive in the present invention is pre-applied to a membrane.

D. Response to Rejection of Claims 1 and 4-8 under 35 U.S.C. § 102(e) as being anticipated by 2003/0219564 A to Hubbard.

At Sections 4 and 5 of the Office Action, Claims 1 and 4-8 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Published Application No. 2003/0219564 to Hubbard (Hubbard). As suggested by the Examiner, this rejection has been overcome by the attached Declaration under 37 C.F.R. § 1.132 by Michael J. Hubbard (Rule 132 Declaration).

As stated in the Rule 132 Declaration, Michael J. Hubbard, Any invention disclosed but not claimed in the Hubbard that relates to the subject matter of the currently pending claims of the present application was derived from Michael J. Hubbard. Accordingly, any invention disclosed but not claimed in the Hubbard Reference is not an invention "by another" and, therefore, Hubbard may not be used as a reference against the claims of the present application.

E. Response to Rejection of Claims 2, 3 and 9-20 under 35 U.S.C. § 103(a) as being unpatentable over Hubbard.

At Sections 6 and 7 of the Office Action, Claims 2, 3 and 9-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hubbard. This rejection is now moot in view of the attached Rule 132 Declaration.

As discussed above in Section E, any invention disclosed but not claimed in the Hubbard Reference is not an invention "by another" and, therefore, Hubbard may not be used as a reference against the claims of the present application.

In view of the foregoing, it is respectfully submitted that this application is in even further condition for allowance, and favorable action is respectfully solicited.

If the Examiner has any questions or concerns regarding the present response, the Examiner is invited to contact Mark J. Guttag at 703-591-2664, Ext. 2006.

Respectfully submitted,

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February 21, 2006